

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1253 (S/S) year 2003

Dhan Singh

Versus

Registrar Cane Cooperative Society
District Udham Singh Nagar and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 20.10.2003

Initial of Judge

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.**

Writ Petition No. 1253(S/S) of 2003

Court No. 6

Date : 20th October, 2003

Dhan Singh
S/o Late Sri Paan Singh
R/o Village Ghuguti
Tehsil Ranikhet, District Almora ----- Petitioner

Vs.

1. Registrar, Cane Cooperative Society
District Udham Singh Nagar
2. Sehkari Ganna Vikas Samiti,
Through its Secretary,
Bajpur , District Udham Singh Nagar
3. Zonal Ganna Seva Pradhikaran,
through its Special Secretary
Sehkari Ganna Vikas Samiti Ltd., Bajpur
District Udham Singh Nagar ----- Respondents

Hon'ble Rajesh Tandon, J.

Heard learned counsels for the petitioner Sri Sharad Sharma and standing counsel on behalf of the State of Uttaranchal. Both the parties have agreed that the writ petition may be decided finally.

By means of the present writ petition the petitioner has prayed for the issue of a writ or order or direction in the nature of certiorari quashing the order dated 02.07.2003 intimating the petitioner that he will be retiring on reaching the age of superannuation w.e.f. 31.12.2003 on attaining the age of 60 years.

Brief facts giving rise to the present writ petition are that the petitioner was appointed on daily wage basis on 01.09.1962 and worked till 22.06.1963 as a daily wager. He was thereafter appointed as a regular class IV employee on 22.06.1963.

The case of the petitioner is that the correct date of birth of the petitioner is 06.03.1951 whereas the Department mentioned wrongly in the service record as 07.12.1943. The petitioner has received a notice for retirement on attaining the age of superannuation in accordance with rule 47 of U.P. Sehkari Ganna Seva Niyamavali, 1975 on attaining the age of 60 years and the same is being charged as illegal.

According to the case of the petitioner he has passed class IV and in the school leaving certificate the date of birth has been shown as 06.03.1951.

Further the submission of the petitioner is that in the family register prepared in column 8 the date of birth has been mentioned as 06.03.1951.

Rule – 2 of the U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 reads as under:-

“2. Determination of correct date of birth or age. The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examinations aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation of his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date of age in any circumstances whatsoever.”

In the present case the petitioner has not passed High School and as such the petitioner has placed reliance only on a certificate of class 4. The submission of the petitioner is that the aforesaid rules are not applicable in the case of the petitioner. Since regulation 47 contains the provision regarding the age of superannuation, the petitioner has not reached the age of superannuation, a notice having been issued to the petitioner cannot be said to be illegal.

The Apex Court in **State of U.P. Vs. Gulaichi (2003) 6 Supreme Court Cases 483** has observed that normally public servants while entering into the service even the date of exit which is said as the date of superannuating or retirement is also fixed, that is why the date of birth is recorded in the relevant register or service book relating to the individual concern. Therefore it is necessary to maintain the date of birth in the service record. The observations of the Apex Court are quoted below:-

“Normally, the public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant

register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

In the case of **Union of India V. Harman Singh** the position in law was again reiterated and it was observed; (SCC p. 167, para 7)

7. A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay.

An application for correction of the date of birth should not be dealt with by the courts, Tribunals or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As

such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court of the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of the date of birth has ;been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth in his service-book.

As observed by this Court in **State of T.N. V. T.V. Venugopalan and State of Orissa V Ramanath Patnaik** when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran* case was adopted.”

Similar controversy came up for interpretation in **State of Orissa and others. Vs. Ramanath Patnaik** AIR 1997 Supreme Court page-2452 where the Apex Court after relying upon the judgment reported in (1994) 6 SCC 302 has held as under:-

“3. The controversy is no longer *res integra*. This Court has considered the entire case law on this point in *State of Tamil Nadu Vs. T.V. Venugopalan*, (1994) 6 SCC 302: (1994) AIR SCW 3947). Therein, this Court has held thus (at p. 3950 of AIR SCW):

It is well known that the service record would be opened after the government servant enters the service and normally the entry in service record would be countersigned by the government servant. The date of birth as entered in the school record is the source of material for making entry in the service record.

4. *when entry was made in the service record and when he was in service, he did not make any attempt to have the service record corrected. Therefore, any amount of evidence produced subsequently would be of no avail. The High Court, therefore, has committed manifest error of law in refusing to entertain the second appeal.”*

In State of U.P. & Others Vs. Sharda Prasad 2000 (2) UPLBEC 1557,
it has been held as under:-

“Petitioner possessed no educational qualification when he got employment on Daily wages against a Class IV Post as Assistant Binder in a Unit of Government Printing and Stationery, U.P. Allahabad on 17.04.1960. Admittedly, he is a Government employee. His services are governed by U.P. Class IV Employees Rules, 1975. His age of superannuation is 58 years which is to be determined with reference to the date of birth mentioned in his service book as provided under U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 as amended vide Rule, 1980-for short called ‘the Rules’.

Relevant Rule 2 of the Rules is respondent:

“The date of birth of the Government servant as recorded in the certificate of his having passed in High School or equivalent examination, at the time of his entry into the Government service, or where a Government servant has not passed any such examination as aforesaid, or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government Service shall be deemed to be his correct date of birth or age, as the case may be, for all purpose in relation to his service, including eligibility for promotion, superannuation, premature retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

According to this rule, 'date of birth' mentioned in 'Service Book' of a Government employee at the time of entering into service shall be deemed to be correct 'date of birth', and it shall remain the same (even if he subsequently passed High School or equivalent examination during service).

Learned Counsel for the respondent referred to the following decisions:

1. ***1996 Supreme Court Cases (L & S) 605, Union of India V. Ram Suia Sharma.*** It was a case, which came up before the Court after the case was decided by the Tribunal. The Supreme Court in its brief judgment observed that correction of ;date of birth cannot be allowed at a be lated stage. It was not a case of variance in the 'date of birth recorded in service record vis-à-vis 'Service Book'.
2. ***1996 (1) ESC 239 (All) (paras 25 and 27), Prof. Mohd. Zameeruddin Siddiqui V. Executive Counsil, Aligarh Muslim University, Aligarh and another.*** A Division Bench of this Court in para 25 observed "The date of birth recorded in the service record at the time of recruitment in the service is final and the same cannot be changed, particularly at th time of retirement." In para 27, the Bench observed to the effect that if an employee has enjoyed a particular privilege and status on the basis of certain facts recorded at th time of entry in service, he shall not be entitled to get the same 'changed'. This Division Bench judgment is relevant to the extent it held that an employee cannot be allowed to take advantage of joining service by representing one to be major at the time of entering in service and thereafter excate 'the consequences' and ' the disadvantages' following from these very facts.
3. ***1995 Supreme Court Cases (L & S) 599 (para 9), Union of India and others V. Kantilal Hematram Pandya and***
4. ***1995 Supreme Court Cases (L & S) 414, Collector of Madras and another V. K. Rajamanickam***

In the present case, petitioner is, however, not working since after 12.10.1995. It is well settled that an employees cannot get ful wages automatically as it involves loss of public money. An employee must prove that he was not gainfully employed elsewhere, which will

require adjudication of facts. This Court should not, therefore, in exercise of extraordinary jurisdiction under Article 226, Constitution of India award full back wages for the past, particularly when there is no pleading or material on record to show that he was not gainfully employed. This Court cannot direct the appellants to pay full salary for the period he has not worked. See 1998 (78) FLR 546 (SC), SIR 1980 SC 840 (para 18 and 19) and 1997 (23) ALR 362.

In the above backdrop, one will appreciate that the Rules, have to be interpreted pragmatically and which furthers the cause of justice. We, therefore, lean in favour of an interpretation which does not prohibit concerned authority from carrying out corrections purely accidental and clerical in nature which neither tend to alter the 'status' and 'corresponding obligation' between the parties. In other words, if the correction is only to remove an 'obvious and apparent' accidental mistake/slip, apparent absurdity as a consequence of interpolation or forgery in record (which is required to straighten the records to bring in line with other material on record) then it is not a 'change' by 'correction' of a nature which in real sense brings change in long settled factual position otherwise proved on record.

The above reasoning finds support from the observation made in the case of Shree Nath (supra) wherein Court held that an employee cannot have his say to his advantage all the time; namely at the time of entry as well as at the time of reaching age of superannuation.

In the case of Shri Bakshi Ram & others V. Shri Brij Lal, JT 1994 (5) SC 422, Apex Court held that in equity a person seeking benefit of certain bundle of facts which permitted a transaction (namely entry in service cannot be subsequently permitted to escape from the disadvantage flowing from same transaction and the affects, if any, flowing from the same. Equity does not permit a party to take stand – Heads I win, tails you loose'. Law, which is 'nothing but logic, has to promote justice and ensure that no party is enriched at the cost of other on technicalities of law by taking unfair stand. Similar view taken by learned Single Judge in (1997) I.E.S.C. 274 (All) (para 16), Sriram V. State of U.P. and others.

In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran reported in 1994 Supp. (1) Supreme Court Cases 155 where the Apex Court has relied upon the judgment of Union of India Vs. Harnam Singh to the following effect:-

A government servant who has declared his age at the initial stage of the employments is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay.”

In view of the facts and circumstances, no interference under Article 226 of the Constitution of India can be made while issuing the notice dated 02.07.2003 retiring the petitioner from the forenoon of 31st December, 2003.

However, the aforesaid order will not preclude the respondent authorities, to correct the accidental slip or omission in recording the date of birth in pursuance of the representation filed by the petitioner during the period of the service of the petitioner i.e. before reaching the age of superannuation in pursuance to the school leaving certificate dated 06.03.1951.

Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

20.10.2003
ASWAL